

2008 MAY 22 P 12:00

In the District Court of the United States  
For the District of South Carolina  
BEAUFORT DIVISION

DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON, SC

|                                     |   |  |
|-------------------------------------|---|--|
| Michael Dinkins, #246044,           | ) |  |
|                                     | ) | Civil Action No. 9:07-3895-HFF-GCK       |
| Petitioner,                         | ) |  |
|                                     | ) |  |
| vs.                                 | ) | <b><u>REPORT OF MAGISTRATE JUDGE</u></b> |
|                                     | ) |  |
| Cecilia Reynolds, Warden of Kershaw | ) |  |
| Correctional Institution,           | ) |  |
|                                     | ) |  |
| Respondent.                         | ) |  |

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The petitioner brought this action seeking relief pursuant to Title 28, United States Code, Section 2254. On March 30, 2008, the respondents filed a motion for summary judgment. By order of this court filed March 25, 2008, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the petitioner elected not to respond to the motion.

As the petitioner is proceeding *pro se*, the court filed a second order on April 29, 2008, giving the petitioner an additional twenty days in which to file his response to the motion for summary judgment. The petitioner was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The petitioner elected not to respond.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989), *cert. denied*, 493 U.S. 1084 (1990).

  
George C. Kosko  
United States Magistrate Judge

May 22, 2008  
Charleston, South Carolina

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
P.O. Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).